

**REMARKS**

Claims 1, 3-11 20, 22-27 are pending.

Claims 1, 3, 4, 7, 9, 11, 20 and 22 are rejected.

Claims 24-27 are new.

Claim 10 has been allowed.

Claims 5, 6 and 8 were objected to.

**Claim Rejections – 35 U.S.C. §102(b)**

Claims 1, 3, 4, 7, 9, 11, 20 and 22 were rejected under 35 U.S.C. §102(b) as being anticipated by Noda et al (USP 5,785,424). In response, Claims 1 and 11 have been amended to clearly distinguish the invention of these independent claims from the invention is Noda. Specifically, Claims 1 and 11 have been amended to make clear that the blending tool of these claims is robust enough to withstand high intensity blending conditions in which the outside edge of the tool rotates in excess of 50 feet per second. For support, see Specification, page 2, lines 21-24. In contrast, the agitators in Noda are designed for mixing fluids “easily and reliably and with a minimum amount of driving power....” Noda, column 1, lines 46-47. The inability of the agitator in Figure 15 of Noda to withstand significant rotational speed is further revealed by the relatively thin sheet metal or other sheet material that forms the agitator boxes shown in Figure 15. Additionally, attachment mechanism 101 and 102 comprises a sleeve over a round rod that is held in place by a simple bolt tightened upon the round rod. As stated, the arrangement allows slidable movement of the agitator boxes. Such an arrangement, however, is suitable for mixing only at modest speeds since slippage is expected at higher speeds. No description of rotation speeds is included in Noda. It is evident, however, that the tool shown in Figure 15 cannot rotate at speeds at its outside edge in excess of 50 feet per second.

In addition to the above, Noda is not enabling and, in fact, teaches away from the present invention. The entire text in Noda describing Figure 15 occurs at column 8, lines 43-67. As described, working surfaces 82 and 83 remain “vertical to the rotating plane ...” In other words, none of the surfaces in Noda are designed to pivot or rotate but are to remain in the orientation shown. As for the connectors shown in Figure 15, lines 61-67 describes these as follows:

On a common upper surface of the cylinders 81 and 81 there is fixed a ring 101 into which a rod-shaped mounting frame 10 is inserted, and secured by a screw 102 to the mounting frame 10, thereby fixing the agitators to the mounting frame 10. *Accordingly, the local agitators are slidably mounted on the rod-shaped mounting frame 10 for allowing their adjustment in the radial direction.*

Noda thus fails to teach any *pivotal* connections between the collision surface and the shank and, in fact, teaches away from such pivotal connection by emphasizing that the flat planes 82 and 83 (the collision surfaces) should remain vertical to the plane of rotation.

Noda is also not enabling as a reference in relation to the claimed invention. As held in Paperless Accounting, Inc. v. Bay Area Rapid Transit Systems, 804 F.2d 659, 665, 231 USPQ 649, 653 (Fed. Cir. 1986): “[A] Section 102(b) reference must sufficiently describe the claimed invention to have placed the public in possession of it...[E]ven if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling...” See also, Akzo N.V. v. U.S.I.T.C., 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986) (“the prior art reference must be enabling”). Since Noda teaches that no pivotal connection is to be made between the agitating assemblies and the shaft, no enablement of pivotal connection has occurred. In all other Figures shown in Noda, the shanks 10 were replaced by a disk, and

pivotal connection is not possible in such configurations. As stated explicitly by the text quoted above, the purpose for the shank and connection system shown in Figure 15 is to enable "adjustment in the radial direction."

The Advisory Action mailed in response to Applicant's non-entered 1.116 Amendment argues against the above by quoting from *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038,1039 (Fed. Cir. 1983): "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." The Advisory Action contains other citations along the same lines as well. These citations, however, do not deal with a situation in which the patentee specifically taught away from the application depended upon for the rejection. In other words, the text of Noda specifically addresses the importance of maintaining the orientation of fabric members 82 and 83 "vertical to the rotating plane ..." Column 8, line 49. This orientation eliminates the ability to pivot the agitating boxes and still be within the enabled invention taught by Noda.

Applicant also notes that the 35 U.S.C. 102(b) rejection is based upon identification of feature 8 in Figure 15 of Noda as the "collision surface" in Noda. This is not accurate. The working surfaces of Figure 15 as described in Noda are in fact membranes 82 and 83 which are described as "fabrics". There are in fact 2 features labeled "8" in Figure 15 of Noda—the arrow to one points to the top of a box assembly while the second arrow points to the leeward side of the box assembly. Features labeled "8" therefore *cannot* be "collision surfaces" within the meaning of the present claims. Working surfaces 82 and 83 in Noda similarly are not collision surfaces as such but instead serve more as baffles to mix and agitate the fluid. The system in Noda is called an "agitator" rather than a "blender", and its function varies accordingly.

Applicant also notes that the 35 U.S.C. 102(b) rejection is based upon identification of feature 8 in Figure 15 of Noda as the “collision surface” in Noda. This is not accurate. The working surfaces of Figure 15 as described in Noda are in fact membranes 82 and 83 which are described as “fabrics”. There are in fact 2 features labeled “8” in Figure 15 of Noda—the arrow to one points to the top of a box assembly while the second arrow points to the leeward side of the box assembly. Features labeled “8” therefore *cannot* be “collision surfaces” within the meaning of the present claims. Working surfaces 82 and 83 in Noda similarly are not collision surfaces as such but instead serve more as baffles to mix and agitate the fluid. The system in Noda is called an “agitator”. In sum, Noda does not teach or disclose a blending can withstand the high intensity blending of Applicant’s claimed invention. Noda also fails to teach or disclose a blending tool comprising collision surfaces as in the present invention nor a pivotal connector. Noda is additionally non-enabling of the present invention. Accordingly independent claims 1 are allowable over Noda as well as each of the claims dependent from claims 1 and 11.

Claim 24 is added as a new claim. This claim is a copy of an original claim that was previously rejected pursuant to US-A-5,009,510, issued to Gabriele. Although Gabriele teaches an articulator hinge, Gabriele does not teach or disclose a blending tool nor a collision surface. Instead, Gabriele teaches a scraping tool designed to scrape material from the bottom of a vessel. There is no teaching that the scraping tool has any “collision surface” or “collision profile” since the disclosed angle of the blade is so low that particles will roll along the blade rather than collide. Additionally, the blade taught in Gabriele clearly is not capable or intended for high intensity blending applications in which the outside of the blade moves in excess of 50 feet per second.

Claim 25 has been added. Support for this claim is found, *inter alia*, in Figure 6 of the application and accompanying text of the Specification.

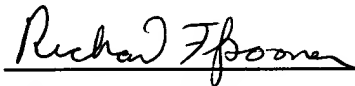
**ALLOWABLE SUBJECT MATTER**

Claim 10 has been allowed over the prior art of record.

Claims 5, 6 and 8 were objected to as being dependent upon a rejected base claim. In response, claims 5 and 6 were amended to independent form with all of the relevant limitations. Claim 8 depends from claim 6. As a result, claims 5, 6 and 8 are now believed to be allowable.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw this rejection. Also, an early indication of allowability is earnestly solicited. Entrance of this amendment as well as reconsideration and allowance of the claims remaining are therefore respectfully requested.

Respectfully submitted,



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